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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

STEVEN ALLGOEWER,

Plaintiff, Cross-defendant and
Respondent,

v.

KAREN WALDEAR,

Defendant, Cross-complainant and
Appellant.

C078268

(Super. Ct. No.
39201200285173CUFRSTK)

Steven Allgoewer sued his sister, Karen Waldear, for conversion of bank accounts that had been owned by their deceased mother, Madeline Allgoewer.¹ Karen responded with a cross-action against Steven for financial elder abuse, abuse, conversion, and common counts. A bench trial resulted in a judgment in favor of Steven for \$9,822.05

¹ Due to some shared surnames and for the sake of clarity, we refer to members of this family by their first names.

plus costs of suit. The trial court awarded nothing to Karen on her causes of action against Steven. Karen appeals from the judgment, but without including a reporter's transcript of any part of the trial.

Karen presents eleven arguments on appeal in which she seeks a reversal and retrial. We reject Karen's arguments even though Steven has not filed a respondent's brief. Even in the absence of a respondent's brief or any opposition to an appellant's opening brief, we may "reverse only if prejudicial error is found." (*Walker v. Porter* (1974) 44 Cal.App.3d 174, 177.) As we shall explain, all of Karen's contentions rest on evidentiary arguments that require a reporter's transcript of trial as a prerequisite to appellate review. In the absence of a reporter's transcript of the trial, we are precluded from reversing on any of the grounds Karen advances on appeal. Accordingly, we affirm the judgment.

BACKGROUND

A court trial was held over three consecutive days. The parties, Steven and Karen, were the only witnesses who testified.

For lack of a reporter's transcript we draw the factual background of this case from the trial court's statement of decision.

Steven's Action Against Karen

Steven brought a cause of action against Karen for conversion. On this cause of action, the trial court made the following findings of fact: "At the time of her death Madeline's estate consisted of two bank accounts at Wells Fargo Bank (. . . balance \$5,091[.]84, and, money market account . . . balance \$14,552.25, total of \$19,644.09) and some miscellaneous personal property. There [h]as been no probate commenced nor does it appear likely to ever be commenced for this small estate. No will has been admitted to probate. [Madeline] did have a document entitled Living Trust Agreement dated June 14, 2009. The Trust Agreement directed Steven Allgoewer to handle the

distribution of all her assets and to pay off all her bills including cremation and burial expenses.”

The trial court further found “[t]hat [Karen] submitted an affidavit pursuant to [Probate Code] § 13100 to Wells Fargo Bank claiming a right to all of the funds therein in the amount of \$19,644.09 which Wells Fargo paid to her. [¶] [Karen] does not have a superior right to half of those proceeds as to [Steven] in the amount of \$9,822.05. [¶] [Karen] has refused to divide the proceeds with [Steven]. [¶] [Karen] claimed those proceeds on the basis of a verbal promise to make a gift to her in the amount of \$50,000.00 representing an advancement on [Steven’s] inheritance to Steven [¶] The court finds that the \$50,000.00 to [Steven] was in fact a gift and not an advancement on his inheritance. [¶] That [Madeline] failed to complete her verbal promise of a gift to Karen . . . which unexecuted promise of future gifts lapsed upon the death of Madeline” (Capitalization omitted.)

Karen’s Cross-action Against Steven

The trial court concluded Karen did not prove any of her causes of action against Steven. Specifically, the trial court found Karen “brought a cross-complaint alleging that [Steven] has converted [Madeline’s] assets through undue influence. In 2004 [Steven] purchased his home in Tracy, California and asked Madeline if she would invest \$50,000.00 toward the purchase price in exchange for free rent for life if she moved in with [Steven] which she agreed to. [Steven] put \$35,000 of his own money toward the house and the parties thereafter resided in the premises. [Karen] contended [Steven] used his undue influence to get Madeline to invest in the residence which [Karen] became aware of in May 2004, and also used Madeline’s money to pay for his monthly cost of living which he allegedly could not afford.” (Capitalization omitted.)

Following the bench trial, the trial court found “there is no evidence of undue influence by [Steven] over his mother [Madeline] nor of any financial abuse. [¶] There

is no admissible evidence that [Madeline] paid any of [Steven's] bills as a result of undue influence or financial abuse. [¶] There is no evidence presented that [Steven] was living beyond his means. [¶] The evidence that Madeline . . . was competent and wanted her son Steven . . . to handle her financial affairs is compelling in Plaintiff's Exhibit 5, 'Interdisciplinary Progress Notes' from the Golden Haven Center HyPana records subpoenaed by [Karen]. [¶] That [Karen] produced no evidence as to damages alleged in the Cross-complaint. [¶] That [Karen] was aware of the alleged undue influence/financial abuse when she received her mother's financial records for her tax return early in 2006. [¶] That the Cross-complaint for elder abuse/undue influence is barred in its entirety by the Statute of Limitations. Welfare & Institutions Code §15657.7 [¶] That claim for conversion of 1/2 of \$1,960.00 is denied as it was paid to a creditor of the estate for funeral services, not to [Steven]. [¶] That there is no evidence as to the valuation of any of the other personal property allegedly connected in [Karen's] Second Cause of Action. [¶] That there is insufficient evidence to find that [Steven] converted any cash belonging to [Madeline] in her safe at the time of her death. [¶] . . . All of [Karen's] 'controverted issues' listed in 1 – 5 of [Karen's] requests for Statement of Decision are answered by the court in the negative – none of these were proven at trial." (Paragraph numbers omitted.)

Judgment and Appeal

The trial court entered judgment in favor of Steven on his claim of conversion and rejected all of Karen's claims. Karen thereafter timely filed a notice of appeal.²

²

The matter was assigned to the panel as presently constituted in October 2018.

DISCUSSION

A.

Principles of Appellate Review

We begin our appellate review with the presumption that the trial court's judgment is correct and supported by substantial evidence. (*Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Consistent with this presumption, we draw all inferences in favor of the judgment unless the record expressly contradicts them. (*Ibid.*) An appellant must affirmatively demonstrate grounds for reversal because trial court error will not be assumed. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549 (*Sullivan*).)

In addition to shouldering the burden of demonstrating error, an appellant "further bears the burden to provide a record on appeal which affirmatively shows that there was an error below, and any uncertainty in the record must be resolved against the [appellant]." (*Sullivan, supra*, 151 Cal.App.4th at p. 549; accord *People v. \$17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084.) An incomplete reporter's transcript precludes review of trial testimony for evidentiary error because the missing portions will be presumed to support the judgment. (*In re Silva* (1931) 213 Cal. 446, 448.)

A reversal of the judgment may not be made except after a review of the entire record. (Cal. Const., art. VI, § 13.) "Appellate inquiry into prejudice is not a process of subtracting the invalid elements to ascertain whether the remaining record is adequate to sustain [the judgment]. Rather, the process entails scrutiny of the entire record to determine the error's influence." (*People v. Hopper* (1969) 268 Cal.App.2d 774, 778.) Appeals made on inadequate records preclude review. With these principles in mind, we turn to Karen's arguments.

B.

All of Karen's Arguments Require a Reporter's Transcript for Review

Upon examination of Karen's arguments on appeal, we determine that all of the issues she seeks to raise require a full reporter's transcript of the trial in order to support any reversal of the judgment.

1. *The Interdisciplinary Progress Notes*

Karen contends the trial court erred in failing to exclude from evidence on hearsay grounds a document titled, Interdisciplinary Progress Notes. Karen further argues the document should have been excluded for lack of authentication. However, in the absence of a reporter's transcript, Karen cannot show she made a timely objection to the document on grounds of hearsay and lack of authentication. Evidence Code section 353 prohibits reversal for erroneous admission of evidence unless "[t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion." Consequently, Karen's challenge to the admissibility of the document titled, Interdisciplinary Progress Notes is not cognizable on this record.

2. *Financial Elder Abuse Cause of Action*

Karen next argues that "[c]opious evidence exists in the record of financial elder abuse of Madeline by [Steven], and nothing in the record contravenes the evidence establishing the elements of a cause of action for financial elder abuse."

Without a reporter's transcript, Karen cannot establish either prong of her argument. Steven's trial testimony could have completely refuted all of her factual allegations because "[t]he testimony of a single credible witness may constitute substantial evidence." (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; see also *Armstrong v. Ford* (1939) 30 Cal.App.2d 347, 352-353 [rejecting defendant's hearsay

objection to wage loss testimony by concluding plaintiff's testimony established his previous wages and earning capacity].)

Moreover, the entirety of the trial testimony is also a necessary prerequisite for reviewing any of Karen's assertions about what the evidence did *not* show. "Without the benefit of the entire record, we cannot say that the evidence is insufficient to support the finding of [the trial court]. *Every* intendment is in favor of the findings and judgment of the court below, and in support thereof it will be presumed that the omitted evidence authorized the same unless there is something in the record to overcome the presumption." (*In re Silva, supra*, 213 Cal. at p. 448, italics added.) Here, the incomplete record cannot serve to cast aside the presumption that the judgment is correct and supported by substantial evidence.

3. Claimed False Interrogatory Responses

Karen contends Steven's responses to several interrogatories "appear[] to have been knowingly false." Her contention refers to Steven's answers that Madeline signed all of her own checks and managed all of her own money. However, the significance of who signed checks on Madeline's behalf and who managed her money is not clear with respect to the evidence presented at trial. For lack of a reporter's transcript, we cannot determine that these facts were even addressed during the trial. Instead, we are bound by the trial court's factual finding that there was "no evidence" of undue influence or financial abuse by Steven. (*In re Silva, supra*, 213 Cal. at p. 448)

4. Claim that Steven Misappropriated Madeline's Property

Karen argues that "[t]he evidence in the record . . . would reasonably compel a finding that [Steven] deprived Madeline of a property right (i.e., the right to negotiate checks payable to her from SunAmerica in the amount of \$8,100.00) pursuant to one or more agreements (i.e., the general power of attorney executed on April 16, 2009 and the special power of attorney executed on April 18, 2009). There is no contrary evidence in

the record.” We reject Karen’s assumptions that the only evidence in the record is documentary evidence. As we explained above, Steven’s trial testimony could have negated all of Karen’s factual allegations. (*Marriage of Mix, supra*, 14 Cal.3d at p. 614.) And, in the absence of a transcript of the whole trial, we cannot review the merit of Karen’s assertion about what the evidence at trial did not show.

5. Claim that the Trial Court Erroneously Failed to Recognize Steven Wrongfully Appropriated Madeline’s Personal Property

Karen next asserts that Steven “endorse[d] multiple checks payable to Madeline in the amount of \$8,100.00. There is no evidence in the record that [Steven] deposited the checks into Madeline’s accounts or used the money for her benefit.” Again, the absence of a reporter’s transcript precludes appellate review of Karen’s factual assertion that Steven failed to use any particular funds for Madeline’s benefit.

6. Claim that the Trial Court Failed to Consider Particular Evidence

Karen contends, “[t]he record is replete with evidence suggesting undue influence by” Steven, including evidence regarding Madeline’s age, illness, and impaired cognition. Karen’s contention is not reviewable on appeal in the absence of a reporter’s transcript because we do not have the complete record with which to assess her assertion about what the record shows. The trial court made an express finding that there was no evidence Steven engaged in undue influence or financial abuse. Based on the incomplete appellate record in this case, the trial court’s factual findings are binding.

7. Steven’s Fiduciary Status

Karen argues that “[n]othing in the record . . . suggests that the Trial Court considered [Steven’s] status as a fiduciary of Madeline, or that the Trial Court considered the fiduciary duties owed by [Steven] to Madeline, from and after April 16, 2009.” Without a reporter’s transcript, Karen cannot demonstrate and we cannot assess whether

Karen timely and properly presented the contention during trial. Consequently, we reject the argument.

8. Evidence of Steven's Actions or Tactics

Karen asserts that “[t]here is no evidence in the record that the Trial Court complied with its duty, conferred by [Welfare and Institutions] Code §15610.70(a)(3), to consider the evidence, described above, of changes by [Steven] in the property rights of Madeline.” Thus, Karen asks that this court “remand this case, with instructions to the Trial Court to consider the evidence of changes by [Steven] to the property rights of Madeline, determining whether [Steven] committed elder financial abuse by undue influence.” Here, the trial court has already heard trial testimony and considered documentary evidence regarding Karen’s assertions of undue influence and financial abuse. On appeal, we presume substantial evidence supports the trial court’s finding there was no evidence of undue influence or financial abuse. (*Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.) And, as we have explained, the record is inadequate to cast doubt on the trial court’s factual findings.

9. Statute of Limitations

Karen argues that “[n]othing in the record suggests that [she] had in her possession, as of June 18, 2009, the financial records of Madeline that would have caused [her] to suspect financial elder abuse by [Steven].” Specifically, she argues the trial court’s finding that the statute of limitations “ran on [her] elder abuse cause of action was founded on [her] alleged receipt of ‘her mother’s financial records for her tax return early in 2006 [sic]. The financial records in question are NOT in the record and were not introduced at trial.” (Original emphasis and brackets retained, record citation omitted.) Karen does admit there *was* oral testimony on this point but contends it was insufficient. Again, the record disallows us from assessing the sufficiency of the evidence in support of the trial court’s findings.

Karen further argues that “[n]othing in the record demonstrates that Madeline’s financial records for 2005, even if received by [Karen] in early-2006, would have caused [her] to suspect financial abuse by [Steven] that began to occur in April, 2009 (when [Steven] procured two separate powers of attorney) and continued through November, 2011.” This argument depends on the assertion that Steven’s *trial brief* did not mention the trial court’s subsequent finding that “financial records for [Madeline’s] tax return early in 2006” supported the factual finding that the statute of limitations had run under the discovery exception. Regardless of the contents of Steven’s trial brief, we are compelled by the rules of appellate review to presume substantial evidence in support of the trial court’s finding that Karen was on notice as of 2006 regarding the facts for which she would belatedly assert causes of action against Steven. (*Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.)

As a backup argument, Karen argues she lacked standing to sue as a matter of law. However, Karen provides no citation to any legal authority in support of the proposition that she lacked standing to sue as a matter of law. For lack of legal authority in support of the argument, we deem this issue forfeited. “When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ ” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408, quoting *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

10. Common Counts Cause of Action

Karen argues that “[t]o prevail against [Steven], [Karen] simply needed to introduce evidence that [Steven] received benefit, any form of advantage, at Madeline’s or [Karen’s] expense. [¶] The record is replete with this type of evidence.” Again, the record in this appeal is inadequate for Karen to meet her burden of demonstrating the evidence in the record as a whole establishes that the trial court

erred reversibly in making its factual finding that she did not prove her cause of action for common counts.

11. Constructive Fraud

Karen next argues the documentary evidence established Steven committed constructive fraud when using his power of attorney and “appropriated [Madeline’s property] for his own benefit between April, 2009 and November, 2011.” Again, our presumption of the correctness of the judgment means we assume Steven’s untranscribed testimony supplied the necessary evidence of benefit to Madeline to defeat Karen’s constructive fraud cause of action.

12. Probate Code sections 4232, subdivision (a), and 4231.5

Karen asserts the trial court erred in denying her causes of action under Probate Code sections 4232, subdivision (a), and 4231.5. This argument relies on Karen’s allegation that “[b]y endorsing checks payable to his mother, the principal, and with no evidence in the record that those checks were used for Madeline’s benefit or deposited into any of her check accounts, [Steven] appears to have breached the duty conferred by Probate Code §4232(a).” She thus believes Steven “is chargeable with losses in the amount of \$8,100.00, with legal interest, thereon” under Probate Code section 4231.5. As with the prior issue regarding constructive fraud, we presume substantial evidence supported the trial court’s finding that Steven did not misappropriate any of Madeline’s funds.

13. Unjust Enrichment

Karen next argues that “[t]he record is replete with additional evidence of additional unjust enrichment of [Steven] not already discussed above.” Among other things, Karen points out various documentary exhibits relating to deposits made by Steven into his own bank account. In a detailed argument based solely on documentary evidence contained in the clerk’s transcript on appeal, Karen argues

the evidence inescapably established that Steven engaged in unjust enrichment. An integral part of her argument are various assertions of what the evidence in the record does *not* contain.

In juxtaposition to Karen’s characterization of the evidence, the trial court made an express finding there was no credible evidence of Steven having engaged in unjust enrichment. This factual finding is binding on us because the appellate record is insufficient to defeat the presumption of correctness of the trial court’s findings.

14. Cause of Action for Conversion

Karen argues that “the record shows that [Steven] exercised dominion over at least \$8,100.00 of Madeline’s SunAmerica checks. At the very least, this case should be remanded to the trial court for retrial of whether [Steven’s] exercise of dominion was wrongful (i.e., whether [Steven] used the money for his own benefit)” To prevail on this claim, Karen must show that Steven converted Madeline’s property to his own use. On this incomplete record, she is unable to make that showing. Consequently, we are compelled to reject the argument.

15. Unclean Hands

Karen contends, “the trial judge erred by not considering evidence of [Steven’s] unclean hands or making a finding thereon.” (Capitalization omitted.) In essence, this contention rests on Karen’s representation that “the record . . . demonstrates that [Steven] has violated equitable principles by using his authority under powers of attorney to endorse checks payable to his principal, with no evidence in the record of benefit to Madeline thereby.” However, the inadequate appellate record precludes our review of Karen’s contention. As a result, the contention must be rejected.

16. Offset

Finally, Karen contends, “the trial judge erred by not offsetting, against the judgment for [Steven], the damages to [her] caused by [his] wrongful conduct.” Her

argument depends on the unsupported statement that “the Trial Court apparently did not consider the evidence . . . that would operate to offset, in favor of [Karen], the Judgment for [Steven].” Having rejected Karen’s prior arguments, we discern no basis for an offset on the judgment in favor of Steven. Moreover, this argument is deemed forfeited for lack of citation to any part of the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 743 [failure to cite to the record forfeits the claim of error].)

DISPOSITION

The judgment is affirmed. Plaintiff, cross-defendant, and respondent Steven Allgoewer shall recover his costs, if any, on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

_____/s/
HOCH, J.

We concur:

_____/s/
BUTZ, Acting P. J.

_____/s/
MURRAY, J.